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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 189 /2006 Single Bench

PETITIONER

IC 41056F Lt. Col. M.K. Sharma,
S/o. Late Shri S.R. Sharma,
Aged about 48 years,
Occupation – Defence Services,
Presently working as Head Works,
S.F. Complex (DRDO),
Jagdalpur - 494001 (C.G.)

P.R. No. 195/06 Arnd Verma
Presented by Shri ... Advocate
dated 31/1/06

VERSUS

RESPONDENTS

1. Union of India,
Through Defence Secretary,
Ministry of Defence, Govt. of India,
New Delhi

2. Military Secretary Branch (MS-3B),
Army Headquarter,
DHQ P.O. New Delhi – 110011.

3. HQ DRDO,
Directorate of Personnel PERS-4,
B Wing, Sena Bhawan,
New Delhi – 110011.

4. Director,
ASL Kanchan Bagh,
Hyderabad (A.P.)

5. General Manager,
S.F. Complex (DRDO),
Jagdalpur – 494001 (C.G.)

R/C for Yadav 12-1-06
THAKUR VIJAY SINGH
Asst. Solicitor General of India
CHHATTISGARH HIGH COURT
High Court Campus, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

The petitioner, above named, most humbly and respectfully submits as under :-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

054

आदेश पत्रक

मामला क्रमांक WP 189/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

18-1-2006

Shri Manindra Shrivastava, Sr. Advocate with Shri Afroz Khan, counsel for the petitioner.

Shri S.K. Beriwal, Sr. Panel Lawyer for the Union of India/ respondents.

Shri Hemant Bais, Admn. Assistant 'B' is also present.

Heard.

By this petition under Articles 226/227 of the Constitution of India, the petitioner who is presently working as Head Works, S.F. Complex (DRDO), Jagdalpur, has challenged the order dated 10-11-2005 (Annexure-P/3) passed by respondent No.2 whereby the petitioner has been transferred and posted to SO 1(L) Eastern Air Command, Shilong.

Reply to the application M.W.P. No. 170/2006 has been filed on behalf of respondent no. 5.

The matter came up for hearing on 17-1-2006 and was heard on that date, but during the course of arguments, both the parties were directed to seek instructions as to whether in Shilong (Megalaya) there is any medical college or not. Hence, the matter was adjourned for 18-1-2006. It is stated by the counsel for the parties that they have sought instructions.

Shri Shrivastava, learned senior counsel appearing for the petitioner submits that the petitioner who is a Member of Defence Services, after receiving the transfer order submitted representation before the competent authority on 21-11-2005 (Annexure-P/4) requesting for cancellation of impugned transfer order dated

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक WP 189/06 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10-11-2005 on the ground that the eldest daughter of the petitioner is now preparing for the Entrance Examination to Medical/ Dental Colleges (MBBS Course) for the year 2006 in the State of Chhattisgarh under Defence Personnel Quota as per the notification dated 10-4-2003 with regard to PMT Entrance Examination issued by Department of Health & Family Welfare. He also submits that when the petitioner failed to evoke any response from the respondent authorities, he approached this Court by filing writ petition bearing W.P.No.6176/2005.

Writ petition No.6176/2005 was disposed of by this Court vide order dated 15-12-2005 (Annexure-P/7) after hearing both the parties and it was directed that the representation submitted by the petitioner be decided as early as possible preferably within a period on one month and till the representation is decided, the petitioner be allowed to continue.

Learned senior counsel appearing for the petitioner submits that the representation has been decided by the respondent authorities and the communication to that effect is Annexure-P/8. He further submits that the request of the petitioner has not been acceded without assigning any reason. He also submits that there is no reference to the order of the High Court.

Shri Beriwal, learned Sr. Panel Lawyer for the Union of India/ respondents, who had filed the caveat was supplied with the copy of the petition alongwith its annexures. Reply to the application for grant of ad-interim relief has been filed alongwith the documents on behalf of respondent No.5/General Manager, S.F. Complex

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(DRDO), Jagdalpur. Learned counsel submits that the petitioner has been transferred due to administrative exigency. Learned counsel referred to document Annexure-R-5/1, which is quoted below :

"A/55151/41056/MS-12A *28 Dec. 2005*

MILITARY SECRETARY'S BRANCH
(MS-12A)

POSTING OFFRS : IC-41056 LT COL MK SHARMA, ENGRS

1. Ref Govt of India, Min of Def (R&DO) SF Complex, Jagdalpur, letter No.SFC/ADMINPC/ MKSH-80/001/2003 dt. 21 Nov 2005, forwarding the application dt 21 Nov 05 submitted by the offr.

2. The application has been examined in the light of relevant posting profiles and exigencies of service. Posting of offrs is guided by organizational requirements and cannot be entirely based on personal requirements. Since the project work assigned to the offr at Jagdalpur is now complete, there is no longer any requirement to post an offr in the stn and the offr has to be accommodated in a fresh assignment to be able to draw pay & allowances.

3. The request of the offr for retention in the same stn has therefore not been accepted. The offr is reqd to mov as ordered, with instructions to report by 27 Jan 06.

Sd/-
(A Ajay Reddy)
Lt Col
AMS-12"

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

During the course of arguments the question arose as to who decided the representation submitted by the petitioner in compliance of the order dated 15-12-2005 passed by this Court in W.P.No.6176/2005. On this, Shri Beriwal submits that the representation was considered by the Military Branch Secretary.

Shri Beriwal, learned counsel for the Union of India/ respondents submits that the Department has all the considerations for the children of the petitioner. He further submits that today he has taken instructions from the authorities to the effect that the petitioner may retain the accommodation for his family till August, 2006 and thereafter if the petitioner requires to extend the said facility the same may also be considered and the Department would render all possible cooperation.

So far as appearance of the petitioner's daughter in PMT Entrance Examination is concerned, necessary certificates be issued as per rules. So far as interference of this Court in the writ petition under Article 226/227 of the Constitution of India is concerned, the Supreme Court in the case of ***Major General J.K. Bansal vs. Union of India and others*** reported in ***2005 AIR SCW 4079*** after considering the decisions rendered in the cases of **National Hydro-electric Power Corporation Ltd. v. Bhagwan (2001 AIR SCW 3548), Union of India v. S.L. Abbas (1993 AIR SCW 1753) & Mrs. Shilpi Bose v. State of Bihar (AIR 1991 SC 532),** has held as under :

> *"12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector*

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आदेश पत्रक

WP 189/06

मामला क्रमांक ..... सन् 200

विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made."

Having considered the facts and circumstances of the case, material on record, in view of the decision of the Supreme Court rendered in the case of ***Major General J.K. Bansal*** (supra) and in view of the statement made by the learned counsel appearing for the Union of India/respondents, no case is made out for interference under Article 226/227 of the Constitution of India.

At this stage, Shri Shrivastava, learned senior counsel appearing for the petitioner, submits that the petitioner may be permitted to make representation afresh before the respondent No.1. Let he may do so and if such representation is being filed by the petitioner the same may be considered and decided on its own merits in accordance with law.

With the aforesaid observations, the petition stands disposed of.

Consequently, M.(W.)P.No.170/2006 & I.A.No.580/2006 also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
Fakhruddin
Judge

Gowri/P

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20/7/06